central tandem switch. CLEC networks, by contrast, generally utilize a "ring" technology, in which a single switch connected to a fiber ring serves an equivalent geographic area. In the CLEC network, call termination that would require tandem switching in BellSouth's network is accomplished with the single switch. However, the CLEC will not be compensated at the rate that BellSouth is compensated for tandem switching. This is the result of the SGAT's dichotomy between rates for tandem switching and rates for end office switching. See SGAT § XIII. & Att. A; Varner Aff. ¶ 184. Apparently, BellSouth will pay the CLEC only the end office termination rate even when the CLEC switch has the same functionality and geographic scope of a BellSouth tandem. This is not reciprocal compensation as required by the Act.

Directory Listings. BellSouth's directory assistance database is a network element required to be unbundled by section 251(c)(3). In addition, nondiscriminatory access to directory assistance services is a stand-alone requirement of section 271(c)(2)(B)(vii)(II) of the checklist. Finally, BellSouth's duty to provide dialing parity includes the duty to provide nondiscriminatory access to directory listings. See 47 U.S.C. § 251(b)(3). Thus, three separate provisions of the checklist -- items (ii), (vii), and (xii) -- require BellSouth to provide CLECs with its directory assistance database on nondiscriminatory terms. BellSouth has not done so.

Although the SGAT on its face does not clearly reveal this limitation, see SGAT § VII.B.2., BellSouth has informed MCI that it will not provide its entire directory assistance database, but only the listings for customers of BellSouth itself and selected independent local telephone companies. BellSouth acknowledges this policy of refusing to provide listings for customers of all independent local companies (Milner Aff. ¶ 68) -- a policy that violates BellSouth's obligation to provide directory listings at parity. See 47 U.S.C. § 251(b)(3).

BellSouth's directory assistance operators have access to a complete database including listings of independent telephone companies' customers, while CLECs' operators do not. BellSouth's operators' access to such listings is clear from their ability to provide independent companies' listings as part of BellSouth's newly launched national directory assistance service. See Henry Decl. ¶ 56. This is not parity, and it impedes CLECs' ability to compete. MCI believes that BellSouth can provide listings to CLECs without violating any confidentiality agreement,[26] but if BellSouth chose to erect a contractual bar, then it must obtain the clearance it needs or end the discrimination by not using such listings itself.

In addition, BellSouth has set up an unreasonable policy by which CLECs' customers' listings are dropped from directory assistance, white pages, and yellow pages when the customer is migrated from BellSouth to the CLEC, unless the CLEC goes to the trouble of making a separate request that the listings remain intact. See Henry Decl. ¶ 43. The assumption should be that end users wish to remain listed unless they indicate otherwise, not that they would want or expect their listings to be dropped just because they changed local carriers. BellSouth's policy creates another unnecessary stumbling block to the development of effective competition.

Bona Fide Request Process and Other Delaying Techniques. Finally, one defect in BellSouth's SGAT that cuts across many checklist items is BellSouth's repeated reliance on the BFR process. The process is slow -- it allows BellSouth up to 90 days just to give the CLEC a quote stating the price and the terms on which it will provide the requested item. See SGAT,

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[26] MCI expects that BellSouth's sharing of listings with interconnected CLECs would be an appropriate use of the listings under BellSouth's agreements with independent telephone companies, just as BellSouth's leasing of unbundled network elements it obtains from third-party vendors would not violate intellectual property rights of those vendors.

Attach. B. Yet BellSouth invokes this non-standard ordering process over and over again, even for concededly technically feasible, standard items that BellSouth is obligated to provide. For example, BellSouth requires use of the BFR process for CLECs to obtain access to unbundled loop distribution, see Varner Aff. ¶¶ 86, 88, interconnection via a meet-point arrangement, see Varner Aff. ¶¶ 46, 52, two-way trunking for the exchange of local traffic between the CLEC and BellSouth, see SGAT § I.D., unbundled transport with capacity greater than DS-1, Varner Aff. ¶ 109, and forms of ILNP other than remote call forwarding and direct inward dialing, Varner Aff. ¶ 172. The effect of BellSouth's insistence on the BFR process in these and other instances is to delay unnecessarily CLECs' competitive development. BellSouth does not impose such artificial delays on itself.

BellSouth's SGAT gives it ample opportunity to impose additional delays as well. For example, although the SGAT states that BellSouth will provide dark fiber, an elements that CLECs will want and need, it sets forth no standardized terms and conditions, but says only that "BellSouth shall use its best efforts" to make dark fiber available within a timetable that runs to at least forty days. See Henry Decl. ¶ 35. BellSouth can also impede CLECs' efforts through other means, such as BellSouth's refusal to notify third-party carriers of new CLEC NXX codes that must be loaded into the carriers' switches, and BellSouth's refusal to test whether CLECs' NXX codes have properly been loaded into their own switches. See Henry Decl. ¶ 46. Because BellSouth performs both of these tasks for its own affiliates, there is a lack of parity, as well as one more potential impediment to effective CLEC service.

VI. BELLSOUTH HAS FAILED TO DEMONSTRATE THAT IT WILL COMPLY WITH THE REQUIREMENTS OF SECTION 272.

BellSouth should not be granted authority to provide in-region interLATA service because it has not demonstrated that "the requested authorization will be carried out in accordance with the requirements of Section 272," as section 271(d)(3)(B) requires. BellSouth has submitted various affidavits claiming that BellSouth, BellSouth Telecommunications, Inc. ("BST"), and BellSouth Long Distance, Inc. ("BSLD") will meet each of section 272's obligations. See, e.g., Jarvis Aff. ¶¶ 5-14, Cochran Aff. ¶¶ 6-31, Varner Aff. ¶¶ 203-229. But beyond the conclusory assertions of its affiants, BellSouth has submitted precious little information evidencing a commitment to comply with section 272, and its careful avoidance of key issues is striking. BellSouth has failed to establish that it will comply with its established obligations to disclose the details of all affiliate transactions, and to deal with its affiliate on an arm's length and nondiscriminatory basis.

The disclosure requirements of section 272 are contained in subsection (b)(5), which requires a BOC and its long distance affiliate to conduct all transactions between them at arm's length, "with any such transactions reduced to writing and available for public inspection." The affiliate must "at a minimum . . . provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page."[27] Section 272 contains several separate and discrete nondiscrimination requirements. For example, section 272(c)(1) provides that a BOC may not "discriminate between [its affiliate] . . . and any other entity in the provision or

[27] Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, ¶ 122, 12 F.C.C.R. 2993 (rel. Dec. 24, 1996) ("Accounting Safeguards Order") (emphasis added).

procurement of goods, services, facilities, and information, or in the establishment of standards." Section 272(b)(1) requires that a BOC and its long distance affiliate operate independently of each other and "imposes requirements beyond those listed in sections 272(b)(2)-(5)."[28] In making the predictive judgment whether a BOC and its affiliate can be expected to comply with section 272, "the past and present behavior of the BOC applicant is highly relevant." Michigan Order ¶ 366.

A. BellSouth Has Not Demonstrated Present or Future Compliance With Respect to Transactions Between BSLD and BST.

BellSouth has not demonstrated that it will comply either with the reporting requirements concerning the terms and conditions of affiliate transactions or with the requirement that these transactions be negotiated and performed on a nondiscriminatory, arm's length basis. BellSouth plainly has not provided disclosure of the details of the substance, terms, and conditions of those past transactions it has described in summary form, and its future compliance cannot be presumed. Analysis of the particular transactions disclosed by BellSouth suggests that BST did not conduct the transactions on an arm's length, nondiscriminatory basis, and did not give unaffiliated carriers an equal opportunity to deal with BST.

If BellSouth were committed to complying with section 272(b)(5), it would have publicly disclosed all relevant transactions in which its affiliates have already participated. BST and BSLD already have consummated several transactions and are currently negotiating others. Jarvis Aff. ¶¶ 14.b, 14.c. But BellSouth has not provided detailed descriptions of all of the transactions between BST and BSLD, along with their terms and conditions. Although BellSouth has

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[28] First Report and Order, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, ¶ 156, 11 F.C.C.R. 21905 (rel. Dec. 24, 1996) ("Non-Accounting Order").

established an Internet page for the description of BST/BSLD transactions, it has not listed any transactions there. Instead, BellSouth has submitted affidavits that briefly describe fifteen BST/BSLD transactions and summarize, in even more conclusory fashion, some of the subject matters of the pending negotiations. These affidavits do not certify that BellSouth has disclosed all relevant past and present transactions and on-going negotiations. Instead, BellSouth "discloses" that "BST has performed and billed BSLD for the [certain] described services performed through July 31, 1997." Jarvis Aff. ¶ 14.c. This arbitrarily limited disclosure is inadequate: it does not certify that the affiant is describing all services performed and billed; and it does not explain why BST has declined to disclose transactions that were performed or billed after July 31.

Even with respect to the fifteen transactions that it has listed, BellSouth has not provided a detailed description of the assets and services involved in the transactions and the terms and conditions of the transfer. Instead, BellSouth has provided only general summaries of various projects performed for BSLD. There are no details of the transactions, and no break-down of the costs involved, the rates charged, or the time periods involved. Instead, the summaries assert an aggregate cost of services and add that the services were provided at "fully distributed costs." Jarvis Aff. ¶¶ 14.c.(1)-(15). This does not provide the detail needed by a CLEC, for example, to be certain it can procure comparable terms. In sum, there is insufficient information for this Commission, or any third party, to conclude that the service was provided on nondiscriminatory, arm's length terms.

With no explanation of why it chose not to make this disclosure in an easily accessible way on the Internet, as required, BellSouth states that it has disclosed unspecified transactions for

public inspection at its Atlanta, Georgia office. Cochran Aff. 26. But the "disclosures" in those documents are as infirm as the "disclosures" contained in BellSouth's affidavits. BellSouth has made "available for inspection" twenty-one sheets of paper, with each page summarizing services provided BSLD. As with the descriptions it submitted by affidavit, BellSouth's Atlanta documents do not contain a statement of completeness and do not describe the subject transactions in adequate detail. They only contain summary and conclusory discussions of types of transactions and services provided.

Moreover, even the limited information provided in BellSouth's affidavits and public inspection documents raises serious questions about compliance with BST's substantive nondiscrimination obligations. In particular, the transactions appear to involve the discriminatory provisioning of consulting services to BSLD, discriminatory transfers of BST employees, discriminatory granting of collocation rights, and discriminatory use of the BellSouth brand name. At the least, BellSouth has submitted insufficient information to dispel these concerns.

Discriminatory Services. BST is providing BSLD with billing consulting services, software services, planning services, testing services, and the use of testing staff. See Jarvis Aff. ¶¶ 14.c.(2), 14.c.(4) through 14.c.(8), 14.c.(11). Because of the paucity of information that BellSouth has provided about these transactions, it is impossible to determine whether BellSouth has offered to provide these services to unaffiliated carriers, and thus impossible to conclude that BellSouth has met its burden to prove compliance with section 272.

Improper Employee Reassignments. BellSouth's disclosures also suggest that it has transferred employees from BST to BSLD in ways that discriminatorily benefit BSLD. BellSouth admits that employees from BST have been reassigned to BSLD. Jarvis Aff. ¶ 14.b.(9). Since

BellSouth does not disclose the positions that these employees held with BST, or the information that they acquired in those positions, it is, at a minimum, impossible to conclude that BST did not effectively provide competitively sensitive information about BST services to BSLD on a discriminatory basis through these re-assignments.

When a BOC employee is reassigned to a 272 affiliate, the employee takes with him or her key information about how the BOC operates, how its network is designed, and how its network is likely to evolve. This kind of information would be extremely useful to interexchange carriers that must interconnect with BST and that are constantly developing new services that must be able to interconnect with BST's current and future network. Accordingly, by transferring employees from BST to BSLD, BellSouth can transfer to BSLD free information and a substantial competitive advantage at the expense of BSLD's competitors. To avoid any such discrimination, BST would either have to take effective steps to ensure that these employees will not use or disclose any non-public information for the benefit of BSLD, or it would have to make timely disclosure to unaffiliated carriers of the information possessed by these employees. BellSouth does not suggest that these employees are subject to any effective restrictions on use and disclosure of this information, and MCI is certainly not aware that since these employee transfers began, BellSouth has fully disclosed this kind of information to unaffiliated carriers.

In addition, for some period of time, BST paid the salaries and benefits of some of BSLD's employees. BellSouth states that "BST continued to incur payroll and benefit costs for a brief time after the employees accepted positions and began work at BSLD." Jarvis Aff. ¶ 14.c.(9). As BellSouth has failed to disclose the number of employees transferred or how long BST paid BSLD's payroll, the discriminatory effect of the transaction cannot properly be evaluated.

Preferential Collocations. BellSouth's disclosures suggest that BST has improperly granted BSLD collocation rights. BST has already granted BSLD collocation rights at four of BST's central offices, despite the fact that BSLD has no long distance authority and its equipment is not yet operational. Jarvis Aff. ¶ 14.c.(14). BellSouth has provided collocation to unaffiliated carriers only on a limited basis, and BellSouth's application fails to demonstrate that BST treated BSLD no better than it treated unaffiliated carriers, in terms of the number, price, and intervals of collocations.

BellSouth Brand Name. As its name shows, BSLD will use the "BellSouth" brand name in marketing its long distance services. BellSouth considers its brand name to be extremely valuable, see Gilbert Aff. ¶ 28, and it has built that value at least in part through substantial expenditure by BST. BSLD does not disclose any agreement with BST compensating BST for use of the brand name or for BST's contribution to the value of the brand name. If the brand name is as valuable as BellSouth claims, BSLD should be paying a very substantial royalty for use of that brand name, and its failure to do so confers on it a discriminatory competitive advantage.[29]

B. BellSouth Has Not Established Essential Performance Standards and Reporting for its Provision of Exchange Access.

As explained in Part IV above, it is critical that BellSouth establish performance standards, and report on its compliance with those standards, in connection with its provision of

[29] Although the Commission has decided in the context of its general affiliate transaction rules that compensation for the value of brand names is not necessary, the Commission has not addressed this issue in the context of section 272. The language and purpose of section 272 dictate that the long distance affiliate compensate the BOC for the BOC's expenditures of ratepayer funds to increase the value of the brand name, and that this transaction be conducted on an arm's length, nondiscriminatory basis.

interconnection, access, and resale to CLECs. Equally important for section 272 purposes, BellSouth must specify performance standards it will abide by for the provision of exchange access services to affiliated and unaffiliated interexchange carriers, and it must provide reports on a regular basis sufficient to show whether it has complied with these standards.

Although BellSouth asserts that it will "continue to participate in public standards-setting bodies" and not "discriminate in the establishment of any standards, including but not limited to industry-wide standards that affect the interconnection or interoperability of public networks," Varner Aff. ¶ 208, BellSouth has not described performance standards that it commits to meet in providing access to interexchange carriers, nor specific reporting on its actual performance in relation to those standards. BellSouth claims that it is "developing" additional reports to demonstrate nondiscrimination, Varner Aff. ¶ 219, but it makes no commitment today to produce specific reports comparing the level of service to its affiliate to the level of service to competing IXCs. Only BellSouth can provide information about the quality of access services it will provide to itself, and it has not committed to do so in its SGAT. Thus, BellSouth has not carried its burden to demonstrate compliance with section 272. It will be too late to establish those standards after BellSouth is granted section 271 authority because at that time, BellSouth will have no incentive to cooperate in the establishment of reasonable standards. Nor would BellSouth have any incentive at that stage to develop the systems to provide timely, accurate reports on its provision of exchange access to its affiliates and to its long distance competitors. Without these requirements, competitors will have no way of knowing the extent to which the services they receive are substandard, and no baseline from which to measure BellSouth's compliance with section 272.

C. BellSouth Has Not Demonstrated Compliance With Respect to Its Official Services Network.

BST has conspicuously failed to address whether and how BSLD will utilize BST's official services network to provide in-region interexchange service. BST, like other BOCs, currently owns substantial long distance network facilities that were purportedly constructed to support BST's local exchange services. United States v. Western Elec. Co., 569 F. Supp. 1057, 1098-99 (D.D.C. 1983). In fact, BellSouth has apparently constructed these networks with far more capacity than it could ever use for official services. Because captive ratepayers (including interexchange carriers that purchased access) paid for the construction of these networks, it would violate the nondiscrimination and cross-subsidization requirements of section 272 for BSLD to obtain the use of these networks on anything other than an arm's length, nondiscriminatory basis.

BellSouth's application and supporting affidavits do not address whether its official services network will be used by BSLD, and if so, on what terms.[30] Nor has BellSouth indicated whether there have been any discussions between BST and BSLD about BSLD's potential use of these networks. The Commission has ruled that any transfers relating to these networks be on a nondiscriminatory basis and that all entities have an equal opportunity to obtain access to the networks. Non-Accounting Order ¶¶ 218, 266. BellSouth makes only the conclusory assertion

[30] In the remand from the D.C. Circuit concerning section 272(e)(4), the Commission explicitly asked the BOCs, including BellSouth, to provide information about how they intended to use their official service networks in providing in-region interexchange service. Comments Requested in Connection With Expedited Reconsideration of Interpretation of Section 272(e)(4), CC Docket No. 96-149, ¶ 4 (rel. April 3, 1997). Notably, BellSouth, like other BOCs, did not respond to this request.

that "to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, it will make such services or facilities available to all carriers at the same rates and on the same terms and conditions." Varner Aff. ¶ 227. BellSouth makes no mention of its official services network and does not explain how it will comply with the Non-Accounting Order if it wants to sell any capacity on that network. In this respect as well, BellSouth has failed demonstrate compliance with section 272.

VII. GRANTING BELLSOUTH'S APPLICATION TO PROVIDE LONG-DISTANCE SERVICES IN SOUTH CAROLINA WOULD BE CONTRARY TO THE PUBLIC INTEREST.

BellSouth's demand for immediate authority to provide in-region, interLATA services subverts the entire scheme of the 1996 Act. The Act was carefully designed to provide an incentive -- in-region, interLATA entry -- for BOCs to cooperate in the task of opening their local networks to competition. The Act's incentive structure would be destroyed if BellSouth were permitted into long distance before its monopoly on the South Carolina local exchange market has been irreversibly terminated. Indeed, BellSouth's entry into long distance before local competition has been firmly established would impede incipient local competition and would cost consumers and the South Carolina economy dearly in terms of foregone economic efficiencies from local competition. Premature entry into the long distance market would also harm competition in that market. The public interest would be disserved by the approval of this application.

In describing some of the contours of the public interest test, the Commission has found as follows:

- The Commission is charged with evaluating the impact of BOC entry into in-

region, interLATA exchange services on both the local and the long distance markets. Michigan Order ¶ 386.

- Checklist compliance is not sufficient, in itself, to demonstrate that local markets have been opened to competition or that the public interest would be served by BOC entry into in-region long distance markets. Id. ¶¶ 389-90.

- In the 1996 Act, Congress required the BOCs to open the local exchanges to competition before the BOCs were permitted to compete in the long distance market. Id. ¶¶ 14, 18, 388.

Despite the Commission's previous determination that competition in local exchange markets is relevant to its public interest inquiry, BellSouth persists in raising the tired claim that the Commission cannot examine competition in local markets as part of its consideration of the Act's public interest test. See BellSouth Br. at 68-72. BellSouth cobbled together this argument from misleading snippets of congressional debate -- an argument the Commission has already explicitly rejected in its Michigan Order (¶ 386).

Because the Commission has already considered and rejected this argument, it does not warrant a lengthy response here. MCI notes only that a public interest test contained in regulatory legislation draws its substance from the underlying purpose of the legislation.[31] Here, as the Commission has frequently observed, the Conference Committee declared that the purposes of the 1996 Act included the express goal of "opening all telecommunications markets to competition." H.R. Conf. Rep. 104-458, at 1 (Jan. 31, 1996) (emphasis added). Given this explicitly stated congressional intent, the Commission stands on solid ground in rejecting BellSouth's crabbed view of the public interest.

[31] This proposition is undisputed. See BellSouth Br. at 68.

A. The Public Interest Factors Discussed by the Commission in the Michigan Order Require the Rejection of BellSouth's Application.

In the Michigan Order, the Commission discussed a number of the factors that it would consider in determining whether a particular application was in the public interest, convenience, and necessity. See Michigan Order ¶¶ 381-402. These factors are relevant to determining both whether local competition exists and whether, once established, local competition will remain viable. Analysis of these factors requires rejection of BellSouth's application.

The Absence of Competition. A critical prerequisite to section 271 approval is "whether all procompetitive entry strategies are available to new entrants." Id. ¶ 387. The Commission explained that the best proof of the availability of these entry strategies is "data on the nature and extent of actual local competition." Id. ¶ 391. If this data is absent, then the Commission would presume that local competition is non-existent and would focus its inquiry on the reasons for the lack of competitive entry. Id.

Here, as BellSouth concedes, local competition in South Carolina is extremely limited. See BellSouth Br. at 13-15; Affidavit of Gary M. Wright, BST App. A, Tab 16. Indeed, the paucity of competition is a critical basis for BellSouth's claim that it may proceed under Track B rather than Track A. The almost total lack of competition is confirmed by internal information available to MCI in its role as a long distance carrier. This information, derived from the terminating access minutes for which MCI reimburses local carriers, shows that as recently as July 1997, CLECs were not responsible for any of the terminating access minutes that MCI reimbursed in South Carolina. See Declaration of Henry G. Hultquist (attached hereto as ex. C). BellSouth is thus not yet facing any meaningful local competition.

BellSouth attempts to blame the lack of local competition on underlying economic and demographic factors peculiar to South Carolina. See BellSouth Br. at 15; Woroch Aff. (BST App. A, Tab 15). In fact, many factors -- including pricing uncertainties and checklist non-compliance -- addressed in previous portions of MCI's comments explain the lack of meaningful competition before BellSouth filed its application. For example, the SCPSC established only interim prices in its July 1997 ruling on the SGAT; final cost-based rates will be established no sooner than January 1998. See supra Part III. CLECs can hardly be criticized for delaying substantial investments in local facilities until they have some idea of what costs will be in the upcoming years. Although the SCPSC ruled that, when these interim rates are eventually finalized, only price decreases will be applied retroactively, CLECs could not have anticipated this decision by the state commission, which was not made until the section 271 decision on July 31. Moreover, there is no assurance what the prices will be after January, 1998. The SCPSC has thus created a continuing level of uncertainty for CLECs. Rational businesses do not commit to long-term supply contracts when the prices of their inputs are completely unknown. In addition, as explained above, it would be logical for CLECs to defer substantial investments in facilities when BellSouth still has not implemented the competitive checklist in numerous ways, including by developing adequate OSS and collocation procedures.

Lack of Safeguards for Future Competition. Equally troubling is the absence of safeguards to ensure that competition, if established, is able to survive. The Commission placed significant emphasis in the Michigan Order on the need for such safeguards. The Commission stated that, for example, it would "be interested in evidence that a BOC is making available, pursuant to contract or otherwise, any individual interconnection arrangement, service, or network element provided

under any interconnection agreement to any other requesting telecommunications carrier upon the same rates, terms, and conditions as those provided in the agreement." Michigan Order ¶ 392. Yet BellSouth refuses to permit CLECs to "pick-and-choose" provisions of other carriers' agreements.[32] In the Commission's words, BellSouth's refusal to permit "pick-and-choose" will only make it that much more difficult for new entrants to "enter the market quickly without having to engage in lengthy and contentious negotiations or arbitrations with the BOC." Michigan Order ¶ 392. Even if BellSouth for now can rely on a decision of the Eighth Circuit to decline to permit "pick-and-choose," BellSouth is not legally precluded from so permitting, and its failure to permit "pick-and-choose" is relevant to the Commission's assessment of the height of entry barriers to local competition in South Carolina.

In the Michigan Order, the Commission further suggested that evidence concerning performance standards and reporting requirements would be helpful in determining whether a local telecommunications market was likely to remain open to competition. See Michigan Order ¶¶ 393-94. Yet, in South Carolina, the performance monitoring that BellSouth has offered is not even minimally adequate to protect local competition. See Part IV above. As a result, regulators and new entrants will find it difficult to determine whether BellSouth is backsliding on its obligation to provide nondiscriminatory access and interconnection. See Michigan Order ¶ 393. Nor has BellSouth included any provisions that would make any performance promises enforceable. As the Commission emphasized, "The absence of such enforcement mechanisms could significantly

[32] BellSouth has stated that it would be willing to permit CLECs to pick-and-choose entire agreements with other parties, but not particular provisions of other parties' agreements. See Henry Decl. ¶ 22 n.3. Clearly, an agreement tailored for one carrier may be entirely inappropriate for another carrier.

delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent." Michigan Order ¶ 394.

Another critical safeguard absent from BellSouth's SGAT is the provision of network elements in combinations that currently exist within BellSouth's network. Even if the Act does not impose a duty on ILECs to combine elements (see Iowa Util. Bd., supra), it surely does not preclude a BOC from agreeing to provide existing combinations without breaking them apart. No legitimate purpose is served when a BOC breaks apart existing combinations of network elements only in order to make it more difficult and expensive for CLECs to compete using these combinations -- whether these combinations permit a CLEC to provide a finished telecommunications service, or whether they are used with network elements from the CLEC's own network to provide a finished service. Breaking apart natural combinations of network elements in these circumstances serves only to increase the costs of entry and to deprive CLECs of the economies of scale and scope that BOCs are supposed to share with them.

Accordingly, in evaluating whether the public interest would be served by the approval of BellSouth's application, the Commission may consider BellSouth's refusal to provide network elements in combination, its failure to specify the terms and conditions on which it will provide CLECs with access to its network to perform the combining function themselves, and the risk that BellSouth will renege on commitments to provide network elements like unbundled loops or unbundled switching on the ground that they are really combinations of network elements. See Part V above.

The Commission should also consider how any unavailability of existing combinations of network elements on specific, enforceable, reasonable, and nondiscriminatory terms would affect the prospects for local competition. At a minimum, BellSouth's position will make it substantially more difficult and expensive for CLECs to compete through finished telecommunications services provided entirely through unbundled elements obtained from BellSouth. The Commission concluded that entry via unbundled network elements provides the kind of facilities-based competition that is a prerequisite to section 271 approval under Track A, see Michigan Order ¶¶ 86-104 (discussing "own facilities" issue), and the Eighth Circuit specifically found this entry strategy to be consistent with the Act. Iowa Util. Bd., 120 F.3d at 814-15. BellSouth's posture inevitably will delay the day when consumers, and especially residential consumers, can enjoy the benefits of competition in South Carolina and throughout the BellSouth region. BellSouth's tactics make local markets less open, and less able to remain open, to competition.

Other Public Interest Factors. Another factor that the Commission stated it would consider in the course of its public interest analysis is whether the BOC will permit CLECs to utilize optional payment plans for non-recurring charges. See Michigan Order ¶ 395. BellSouth does not discuss these types of payment plans in its application; if BellSouth was offering any such payment plans to CLECs, it presumably would have referenced this fact. Indeed, no such provision appears in BellSouth's SGAT or in BellSouth's agreement with MCI. Needless to say, BellSouth's failure to include such provisions will hamper the development of local competition in South Carolina.

The Commission also noted that its public interest analysis would be informed by examples of BOC behavior that was discriminatory or in violation of state or federal

telecommunications regulations. See Michigan Order ¶ 397. Most alarmingly, in its region BellSouth has on several occasions misused confidential CLEC information in an attempt to retain customers who had agreed to transfer their local telephone service to the CLEC. Specifically, BellSouth sent retention letters to customers in Georgia whose transfer orders had been received from CLECs, urging the customers to cancel their orders before the transfer of service. Although BellSouth assured the Georgia PSC that such letters were sent only in response to BellSouth's disconnect orders, not confidential MCI ordering information, retention letters have been received in connection with new line installations, where no disconnect order was generated. Henry Decl. ¶ 61. Such activities effectively stifle competition and make the likelihood of future competition even dimmer. See Michigan Order ¶ 379 (discussing a similar program conducted by Ameritech Michigan).

Especially for a section 271 application that relies on the paper promises contained in an SGAT, it is noteworthy that BellSouth has not hesitated in the past to disregard binding contractual promises that it has made with competitors. For example, BellSouth explicitly agreed in a contract with MCI that it would lower access charges in Tennessee once the Tennessee legislature authorized price cap regulation. After the legislation was passed, BellSouth simply refused to lower its access charges. MCI was forced to file suit against BellSouth in federal court. See Henry Decl. ¶ 22 n.2. When BellSouth engages in this type of behavior, it stifles competition by making clear to new competitors that they may well face the additional costs of having to drag BellSouth into court before BellSouth will comply with even clear contractual requirements.

In addition, BellSouth has repeatedly disregarded or contested the Commission's regulations implementing the 1996 Act. BellSouth's cavalier attitude toward the Commission's

rulings is demonstrated by the numerous challenges that BellSouth has made to particular Commission requirements. As discussed in more detail above, BellSouth refuses to comply with Commission precedent concerning combinations of unbundled elements, performance standards, pricing (including deaveraging), and contract services arrangements.[33] Furthermore, BellSouth claims that the Michigan Order improperly requires it to "provide data on the underlying items requested by means of OSSs," and it has in fact failed to provide this data. See Petition of BellSouth Corporation for Reconsideration and Clarification, filed in CC Docket No. 97-137, at 4 (Sept. 18, 1997). BellSouth has also challenged the Commission's determination that BOCs are prohibited from mentioning affiliated long distance carriers in marketing scripts unless the customer has requested the names of long distance carriers. See id. at 7-10.

Notably, BellSouth declined to address the several public interest factors discussed by the Commission in the Michigan Order.[34] This omission provides further evidence, if any was necessary, that BellSouth simply does not feel constrained by Commission precedent.[35]

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[33] See also BellSouth Br. at 20 ("There are a few areas in which BellSouth disagrees with the interpretations of checklist requirements suggested in the Commission's Michigan Order, particularly regarding pricing, combinations of unbundled network elements, and certain OSS performance measurements and standards."); id. at 20 nn.15 & 16 (discussing various legal challenges BellSouth has raised to Commission rulings); BellSouth Corporation v. FCC, Petitioner's Statement of Issues Presented for Review, Case No. 97-1113 (Apr. 10, 1997) (raising constitutional challenges to the Commission's regulations under section 274).

[34] Although BellSouth has asked the Commission to reconsider various aspects of the Michigan Order, including the Commission's discussion of public interest issues, the Commission has yet to act on BellSouth's reconsideration petition, and the Michigan Order remains binding. See Petition of BellSouth Corporation for Reconsideration and Clarification, filed in CC Docket No. 97-137, at 10-16 (Sept. 18, 1997).

[35] MCI does not dispute BellSouth's right to challenge Commission rulings through legal proceedings. Nevertheless, BellSouth's obstructionist approach seems to designed to delay even further the advent of competition in its region.

BellSouth's intransigence and resistance to regulation at this point in time -- when it still needs the Commission's authorization to enter long distance -- provides a worrisome preview of BellSouth's likely behavior once it has swallowed the "carrot" of long distance entry.

In summary, BellSouth has simply refused to satisfy -- or even acknowledge -- many of the key public interest factors discussed by the Commission in its Michigan Order.[36]

B. BellSouth's Entry into the Long-Distance Market Would Not Produce Significant Increases in Consumer Welfare.

Instead of responding in its brief to the Commission's public interest concerns, BellSouth attempts to show that its provision of long distance service in South Carolina would bring a cornucopia of economic benefits to the long distance market in general and to South Carolina consumers in particular. Central to its thesis are the notions that the long distance market is not presently competitive, that experience with incumbent local carriers' entry into long distance has been favorable, and that BellSouth is well-situated to provide long distance services in South Carolina. See BellSouth Br. at 72-84.

BellSouth's claims of significant increases in consumer welfare as the result of its entry into long distance are spurious. Consumers will benefit to a much greater extent if local competition in South Carolina develops prior to BellSouth's entry. The risks to local competition

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[36] The Commission has invited comment on additional factors that would show whether a BOC has opened its market to competition, as well as comment on conditions that could be placed on BOC entry into the long distance market. See Michigan Order ¶¶ 398, 400-01. However, because BellSouth is so far from even offering to comply with multiple provisions of the Act, CLECs are only beginning to discover the multiple deficiencies in BellSouth's practices, processes and promises. It would therefore be impossible at this stage to develop an even minimally useful list of the hundreds of conditions and contingent conditions needed to ensure BellSouth's compliance with the Act.

from premature BOC entry into long distance far exceed any alleged benefits from any increase in long distance competition resulting from that entry.

1. The Long-Distance Market is Already Competitive.

As Professor Robert Hall demonstrates, competition in the long distance market is robust. Declaration of Robert Hall, ¶¶ 120-81 (attached hereto as ex. D). In support of its argument that the long distance market is not competitive, BellSouth claims that the long distance carriers have not passed on the reductions in access charges that have taken place since 1990. In fact, as Professor Hall demonstrates, the major interexchange carriers have consistently passed on decreases in access charges to their customers: revenue per minute (excluding access charges) has exhibited a steady decline in the last decade. See Hall Decl. ¶¶ 126-31. Undeniably, the public has benefited from the healthy competition in the long distance market. As Professor Hall explains, prices for long distance have declined sharply relative to the general price level. See id. ¶ 127. Indeed, if long distance competition was as limited and prices were as high as BellSouth claims, BellSouth and the other BOCs would have leapt at the opportunity provided in the 1996 Act to offer out-of-region long distance services immediately -- an opportunity that the BOCs have declined to pursue despite the fact that they have obtained very favorable contracts to resell interexchange services throughout the country.[37] The truth is that BellSouth is only interested in leveraging its existing local monopoly in South Carolina into the long-distance market.

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[37] BellSouth candidly admitted in the state proceedings that it had little incentive to compete in out-of-region long distance: "[A]s a place for investment for likely profit, out-of-region long distance as a reseller is much less profitable I would think than in-region provision of service even as a reseller." Taylor Testimony, BST App. C, Tab 62, at p.227. In other words, there is little or no excess profit to wring out of the long distance business. See, e.g., Hall Decl. ¶ 167.

Moreover, long distance competition has benefited all customers, including low-volume callers. Discount and flat-rate plans are widely available to long-distance callers. MCI customer data indicate that the vast majority -- over 75 percent -- of its customers use discount plans, not standard rates. Nearly half of MCI's customers using standard calling rates had bills of less than $1.50 in an average month. See Hall Decl. ¶ 142. Moreover, there are a great number of "10XXX" services that customers may utilize without presubscription and without fees or monthly minimum charges. See Hall Decl. ¶ 140. To the extent that rates are higher for low-volume callers, this fact is due to the fixed costs carriers incur in serving customers, not to a lack of competition. See Hall Decl. ¶¶ 149-52.

In any event, BOCs are unlikely to spur competition for low volume customers. Due to section 272's separate affiliate and non-discrimination requirements, BOCs cannot immediately capture any claimed, but unproven efficiencies from joint billing and marketing services, and in any case, many of these efficiencies could be captured through contracts. See Hall Decl. ¶ 75; Decl. of Kenneth Baseman and Frederick R. Warren-Boulton, ¶ 64 ("Baseman Decl.") (ex. E).

2. ILECs have done little to enhance consumer welfare where they have been allowed into long distance.

BellSouth's brief prominently highlights the supposed benefits to competition from the entry of incumbent local exchange carriers into long distance. See BellSouth Br. at 76-78. For example, BellSouth argues that SNET's long distance rates in Connecticut are below those of AT&T. BellSouth omits to mention that the AT&T rates it is referring to are standard rates and that SNET's rates are significantly higher than the discount rates that are available from numerous carriers. See Hall Decl. ¶ 90. And for intraLATA toll calls, SNET's record is no better. Its

intraLATA toll rates are significantly above those of the major interexchange carriers; ironically, its intraLATA toll rates are even above its competitors' interLATA toll rates. See id. ¶ 91. While SNET may have been able to capture rapidly a large share of the long-distance market in Connecticut, its success is not the result of having brought added price competition to the state, but is due more to discriminatory acts against its competitors than to superior prices or service.[38]

3. BellSouth's claimed advantages in South Carolina will result in few benefits to consumers.

BellSouth devotes a significant portion of its brief to trumpeting the benefits it claims it will bring to long distance competition in South Carolina. See BellSouth Br. at 78-84. Rhetoric aside, the most concrete example it can articulate is a promised five percent rate reduction off AT&T's non-discounted rates. In other words, BellSouth intends to position itself as a high-price, not a low-price carrier in South Carolina, because numerous carriers provide much better rates than AT&T's standard rates. Indeed, BellSouth's economist admitted on cross-examination that BellSouth would lower its rates to the minimum extent possible.[39] Moreover, many of the efficiencies that BellSouth theoretically might possess could be captured through contract arrangements with other carriers. See Hall Decl. ¶ 75 (any marketing efficiencies could be

[38] SNET has captured a large share of AT&T customers largely by terminating its joint billing agreement with AT&T. See Hall Decl. ¶ 92; Baseman Decl. ¶ 25. In addition, since entering long distance, SNET has been unwilling to allow the customers of its competitors in the interexchange market to sign up for intraLATA presubscription. (SNET has made an exception to this policy for Sprint, which carries SNET's long-distance traffic.) SNET has also engaged in an anticompetitive PIC freeze campaign, which MCI has filed suit in federal court to halt. See Complaint, MCI v. SNET, Civil Action No. 397CV00810-AHN (D. Conn. filed Apr. 29, 1997). In short, the primary effect of SNET's entry has been to decrease consumer welfare. See Hall Decl. ¶ 92.

[39] See BellSouth Br. at 78; id. App. D, Tab 8 (BellSouth's proposed tariff); see, e.g., Taylor Testimony, BST App. C, Vol. 6, at p. 207.

captured completely through contract); id. ¶ 218 (outsourcing of business services is a growing trend in the U.S. economy).

4. Purported consumer preferences for bundling would hamper local competition if BellSouth is allowed to provide long distance prematurely.

To the extent that consumers in fact prefer to receive bundled telecommunications services (as BellSouth alleges in its brief, at 80-82), this preference would weigh strongly against permitting BellSouth's entry into long distance while BellSouth has a unique and unjustified ability to provide bundled local and long distance services to every customer in its region. Immediate entry would therefore give BellSouth a wholly artificial and illegal advantage in competing for long distance customers, and unfairly reducing the base of long distance customers would make entry into local markets more difficult and expensive.

BellSouth already serves virtually every customer in the relevant market (the BellSouth service area in South Carolina), and the moment it receives in-region interexchange authority, BellSouth will immediately be able to offer each customer facilities-based local services bundled with resold long distance (which is available to BellSouth at very advantageous rates due to the highly competitive long distance market). By contrast, none of BellSouth's competitors provides interLATA services to more than a portion of the relevant market, and local competition (both facilities-based and resale) is just becoming established in South Carolina. Whereas BellSouth will be able to take immediate advantage of a well-established and smoothly functioning wholesale market for long distance and to offer robust long distance services to every single one of its local customers on the day it obtains in-region authority, its competitors will be forced to struggle with the many uncertainties and difficulties involved in inaugurating local competition